IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10864 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISIONAL CONTROLLER

Versus

VALLABH BHURA DADHANIYA

Appearance:

1. Special Civil Application No. 10864 of 2002

MS MONALI H BHATT for the Petitioner

MR ND SONGARA for MR GK RATHOD for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 19/09/2003

ORAL JUDGEMENT

Heard the learned advocates.

RULE returnable today.

The learned advocate Mr.Songara waives service of rule.

With the consent of the learned advocates, the matter is heard and disposed of today.

The petitioner - Gujarat State Road Transport Corporation (hereinafter referred to as 'the Corporation') challenges the judgment and award dated 19th February, 2002 passed by the learned Labour Judge, Junagadh in Reference LCJ No.167/1998.

The respondent - workman was appointed in the Corporation as a Conductor. On 15th February, 1996 he was assigned duty at Parawada-Gunda route. However, the workman did not report for duty. As a result the Corporation had to cancel the trip. On account of the cancellation of the said trip the Corporation suffered monetary loss. The Corporation, therefore, initiated disciplinary action being Departmental Case No.100/1996 against the workman. The workman did not answer the charge-sheet nor did he participate in the inquiry. Inspite of several notices given to the workman, the workman did not remain present before the Inquiring Officer. The workman's guilt having been proved, the workman was, under order dated 30th September, 1996, dismissed from service. Feeling aggrieved, the workman raised industrial dispute which was referred to the Labour Court, Junagadh and was registered as above.

The learned Labour Judge has upheld the disciplinary action initiated against the workman. The learned Judge has also believed that on 15th February, 1996 the workman did not report for duty without prior intimation. The learned Judge has also observed that the workman did not participate in the disciplinary inquiry. However, the learned Judge has held that from 15th February, 1996 to 21st February, 1996 the workman was suffering from malaria. It was on account of his sickness that the workman could not report for duty. Thus, the learned Judge has opined that the workman had legitimate reason for not reporting on duty and the order of dismissal from service was not commensurate to the guilt established against the workman. The learned Judge has, therefore, set-aside the order of dismissal from service. The learned Judge has ordered that the workman shall be reinstated in service with the benefit of continuity in service and 20% of backwages calculated on the basis of the last pay drawn. Feeling aggrieved, the Corporation has preferred the present petition.

Ms.Bhatt has submitted that the learned Judge, having found that the workman was guilty, has erred in interfering with the order of punishment. Even if the punishment were too harsh and the workman was required to be reinstated in service, the learned Judge ought to have imposed an appropriate punishment upon the workman for misconduct established against him. Inspite of the guilt of the workman, the workman has also been rewarded with 20% of backwages.

Mr.Songara has supported the judgment and has submitted that the learned Judge is right in holding that the order of punishment of dismissal from service was not commensurate to the guilt proved against the workman. Besides, the workman has been punished by not awarding him the full backwages. No interference is, therefore, warranted.

The award of backwages is necessarily an order of damages calculated in terms of the loss of salary. In the present case, the learned Judge has found that the workman had an alternative source of income. He was cultivating his lands. Considering this fact, the learned Judge has awarded 20% of backwages. Thus, in my view, the denial of full backwages cannot be said to be a punishment as understood in the service jurisprudence.

As recorded hereinabove, the workman did commit misconduct by remaining absent from service without prior intimation. His absence would result not only in loss of revenue to the Corporation but should also cause inconvenience and hardship to the passengers. It should also be noted that the workman did not participate in the disciplinary action nor did he point out before the disciplinary authority that he could not report for duty on account of the reasons beyond his control i.e. the sickness. Further, the service record of the workman also cannot be said to be clean or satisfactory. On as many as four occasions disciplinary action had been held against the workman. On misconduct having been proved various punishments ranging from fine to withholding of increment were imposed upon him. Though I do agree that punishment of dismissal from service is too harsh and cannot be said to be commensurate to the guilt proved against the workman, the misconduct committed by the workman does call for some punishment.

In the above circumstances, the petition is partly allowed. The award of the learned Labour Judge, Junagadh passed on 19th February, 2002 in Reference LCJ No.167/1998 deserves to be modified as under :

(a) the order dated 30th September, 1996 dismissing the workman from service is quashed and set-aside;

(b) the workman is ordered to be reinstated in service;

(c) the period of absence of the workman from 30th September, 1996 (the date of the order of dismissal from service) till 4th April, 2002 (the date of the publication of the award in the Official Gazette and the expiry of 30 days therefrom) shall be regularized as extraordinary leave without pay;

(d) the workman shall be entitled to receive pay and allowances from 5th April, 2002;

For the misconduct proved against the workman, the workman shall be visited with punishment of withholding of one increment for six months with future effect. The amount of arrears of salary payable pursuant to this order shall be paid within eight weeks from today.

Order accordingly.

Rule is made absolute to the above extent. The parties shall bear their own costs.

(Ms. R.M.Doshit, J.)

/sakkaf

Upon acceptance of the Note for Speaking to Minutes filed by the learned advocate, direction (d) "the workman shall be entitled to receive pay and allowances from 5th April, 2002" appearing on page 5 of the judgment is replaced for the words "the workman shall be entitled to receive pay and allowances from 5th March, 2002"

4th December, 2003. (Ms. R.M.Doshit, J.)
/sakkaf